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Date of Deposit: October 12, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Leviten, Michael W.	Examiner:	Wilson, Michael C.
Serial No.:	09/887,552	Group Art Unit:	1632
Filed:	June 21, 2001	Docket No.:	R67/75658.197
Confirmation No.	5854		
Title:	Transgenic Mice Containing Cerberus Gene Disruptions		

DECLARATION OF MICHAEL LEVITEN PURSUANT TO 37 C.F.R. § 1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Michael Leviten, residing at 3166 Bryant Street, Palo Alto, CA 94306, hereby declare:

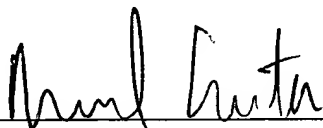
1. I am a joint inventor of the subject matter claimed in the above-cited patent application, entitled "Transgenic Mice Containing Cerberus Gene Disruptions."
2. I am familiar with the above-cited application. I am also familiar with the Office Action mailed June 22, 2005. I am aware that the Examiner has rejected the claims as anticipated under 35 U.S.C. § 102(a) by Stanley et al., Genesis, 2000, 26:259-264, which according to NCBI records was published in April 2000. The reference discloses a mouse having the first coding exon of the *Cer1* gene replaced with a *lacZ* reporter.
3. The claimed invention, a transgenic mouse having a disruption in the *Cer1* gene, was invented prior to the publication date of April 2000 of the Stanley reference. In support, attached are printout pages from Assignee Deltagen's internal FileMaker animal tracking database. On each page, the box entitled "Target #" shows the number "67" which is Deltagen's internal reference number for the *Cer1* gene (see also the box entitled "Target Info" and the docket

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number of the instant case). On page 1, it can be seen that heterozygous mice were born on November 11, 1999. On page 2, it can be seen that homozygous mice were born on January 25, 2000.

4. Thus, heterozygous and homozygous mice within the scope of the claims were actually reduced to practice prior to the April 2000 effective date of the Peters reference.

5. I further declare that all statements made herein of my own knowledge are true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.



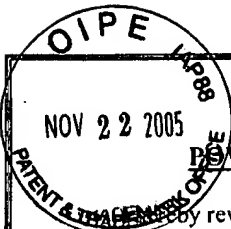
Michael Leviten

10/12/05

Date

DELTA GEN Mice										Work	Export	Print	Find	Find All	Find List
Mouse #	ES line #	Chimera #	Gen	Toe clip #	Cage #	Rack	Section	room							
28309	905	3333	2	10	0	0	0	0							
Sex	DOB	Age	DOD	ES parent %	chimerism	Agg #									
female	11/11/1999	N/A days	5/17/2000	R1		1338									
Target #	Construct #	ES Rank	procedure		date							DB type	Target Info		
67	269	1	F1 X F1 mating		12/21/1999							Small molecule	PRIOR		
Team/SubT	G	F	N									Family	<input type="checkbox"/>		
	2	1	0									Growth Factor Inhibitor			
Genotype Heterozygote				type of death			OBProg					Subfamily			
				sac-not needed			DeltaBase					Cerberus			
Comments															
[Analysis]															
[Copy]															
[Paste]															
mutant Neo (55) procedure															
helicobacter-free <input type="text"/> F1 X F1 mating															
[Cards: Clean mice]															
[Cards: Inc. Mice] [Cards: Deltagen] [Change sex] [mouse work] [Add procedures]															
[Cards: Inc. Outr.] [Cards: Deltagen 2] [Tail Animals] [Enter Genotype]															
Date Day Status Scientist															
Wean/Data 12/2/1999 Thursday <input checked="" type="checkbox"/> Complete Harrabi, On															
Mating first 12/30/1999 Thursday <input checked="" type="checkbox"/> Complete															
Second 1/8/2000 Thursday <input checked="" type="checkbox"/> Complete															
Third 1/13/2000 Thursday <input checked="" type="checkbox"/> Complete															
[Sperm freeze] [Sperm physio.]															
Breed Request <input checked="" type="checkbox"/> Delta One Colony <input type="checkbox"/>															
NeoC Confirmed <input type="checkbox"/>															
[Work] [All Work] [Ignore 40 days]															
[Work] [Future] [Ignore until:]															
[Work] [Undo ignore]															
Breeding Siblings															
Same Chimera # Same ES line Same Target															
Mouse number	Sex	DOB	DOD	Age	Gen.	ES #	Chim.	ES	%	Cons.	TC #	+/-	GL?		
28300	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	1	Wild-ty	<input type="checkbox"/> en		
28301	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	2	Wild-ty	<input type="checkbox"/> en		
28302	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	3	Wild-ty	<input type="checkbox"/> en		
28303	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	4	Wild-ty	<input type="checkbox"/> en		
28304	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	5	Wild-ty	<input type="checkbox"/> en		
28305	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	6	Wild-ty	<input type="checkbox"/> en		
28306	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	7	Wild-ty	<input type="checkbox"/> en		
28307	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	8	Wild-ty	<input type="checkbox"/> en		
28308	male	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	9	Wild-ty	<input type="checkbox"/> en		
28309	female	11/11/1999	5/17/2000	N/A days	2	905	3333	R1		269	10	Heteroz	<input type="checkbox"/> en		
28310	female	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	11	Wild-ty	<input type="checkbox"/> en		
28311	female	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	12	Wild-ty	<input type="checkbox"/> en		
28312	female	11/11/1999	5/17/2000	N/A days	2	905	3333	R1		269	13	Heteroz	<input type="checkbox"/> en		
28313	female	11/11/1999	5/17/2000	N/A days	2	905	3333	R1		269	14	Heteroz	<input type="checkbox"/> en		
28314	female	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	15	Wild-ty	<input type="checkbox"/> en		
28315	female	11/11/1999	5/17/2000	N/A days	2	905	3333	R1		269	16	Heteroz	<input type="checkbox"/> en		
28316	female	11/11/1999	12/14/1999	N/A days	2	905	3333	R1		269	17	Wild-ty	<input type="checkbox"/> en		

DELTA GEN Mice										Work	Export	Find	Find All	Find List	
Mouse # 45880	ES line # 905	Chimera # 3332	Gen. 3	Toe clip # 507	Cage # 0	Rack 0	Section 0	room	DB type Small molecule	Target Info PRIORITY <input type="checkbox"/>					
Sex female	DOB 1/25/2000	Age N/A days	DOD 11/22/2000	ES parent R1	% chimerism 1338	Agg # 1338	DB Ver 1	Family Growth Factor Inhibitor	Subfamily Cerberus						
Target # 67	Construct # 269	ES Rank 1	procedure date												
Team/Sub T 3	G 2	N 0	Aging 2/29/2000												
			Aging Necropsy 10/25/2000												
Genotype Homozygote			type of death sac-experimental			DB Prog DeltaBase									
Comments 11/22/2000 - to necropsy JL 1/8/2001 - genotype confirmed, JD/MS															
Penalyst															
Copy															
Paste															
mutant Neo (55)										procedure					
helicobacter-free										Aging Necropsy					
Cards: clean mice															
Cards: ES Mice															
Cards: DeltaGen															
Change sex															
mouse work															
Add procedures															
Cards: ES Over															
Cards: DeltaGen 2															
Tail Animals															
Enter Genotype															
Date															
Day															
Status															
Scientist															
Wean/Data															
Mating first															
Second															
Third															
Breed Request															
Delta One Colony															
Neo C Confirmed															
Work															
All Work															
Ignore 40 days															
Work															
Future															
Work															
Undo ignore															
Siblings															
Same Chimera #															
Same ES line															
Same Target															
Mouse number	Sex	DOB	DOD	Age	Gen.	ES #	Chim.	ES	%	Cons.	TC #	+/-	GL?		
45873	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	500	Heteroz	<input type="checkbox"/> en			
45874	male	1/25/2000	11/24/2000	N/A days	3	905	3332	R1	269	501	Wild-ty	<input type="checkbox"/> en			
45875	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	502	Heteroz	<input type="checkbox"/> en			
45876	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	503	Heteroz	<input type="checkbox"/> en			
45877	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	504	Heteroz	<input type="checkbox"/> en			
45878	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	505	Heteroz	<input type="checkbox"/> en			
45879	female	1/25/2000	7/6/2001	N/A days	3	905	3332	R1	269	506	Wild-ty	<input type="checkbox"/> en			
45880	female	1/25/2000	11/22/2000	N/A days	3	905	3332	R1	269	507	Homoz	<input type="checkbox"/> en			
45881	female	1/25/2000	6/29/2001	N/A days	3	905	3332	R1	269	508	Wild-ty	<input type="checkbox"/> en			
45882	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	509	Heteroz	<input type="checkbox"/> en			
45883	female	1/25/2000	11/22/2000	N/A days	3	905	3332	R1	269	510	Homoz	<input type="checkbox"/> en			
45884	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	511	Wild-ty	<input type="checkbox"/> en			
45885	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	512	Heteroz	<input type="checkbox"/> en			
45886	male	1/25/2000	3/14/2000	N/A days	3	905	3332	R1	269	513	Homoz	<input type="checkbox"/> en			
45887	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1	269	514	Heteroz				



POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(b).

I hereby appoint:

☒ Practitioners associated with the Customer Number: **26619**

OR

☐ Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Reg. No.	Name	Reg. No.

As attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent application assigned only to the undersigned according to the USPTO assignment records or assignment documents attached to this form in accordance with 37 CFR 3.73(b).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(b) to:

☒ The address associated with Customer Number: **26619**

OR

<input type="checkbox"/> Firm/Individual			
Address			
City	State	Zip	
Country			
Telephone	Email		

Assignee Name and Address: Deltagen, Inc.
1031 Bing Street
San Carlos, CA 94070

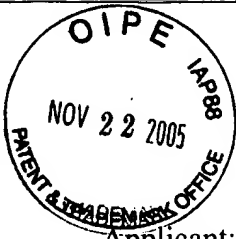
A copy of this form, together with a statement under 37 CFR 3.73(b) (Form PTO/SB/96 or equivalent) is required to be filed in each application in which this form is used. The statement under 37 CFR 3.73(b) may be completed by one of the practitioners appointed in this form if the appointed practitioner is authorized to act on behalf of the assignee, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record

The individual whose signature and title is supplied below is authorized to act on behalf of the assignee.

Signature		Date: September 13, 2005
Name	Robert J. Driscoll	Telephone: (650) 569-5168
Title	Vice President, Intellectual Property and Legal Affairs	

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STATEMENT UNDER 37 CFR 3.73(b)

Applicant: Leviten, Michael W.

Docket No.: R67/75658.197

Application No.: 09/887,552

Entitled: Transgenic Mice Containing Cerberus Gene Disruptions

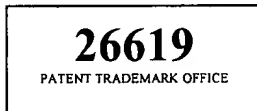
Deltagen, Inc., a corporation states that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of an assignment of the inventor(s) of the patent application identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 012462, Frame 0575, or for which a copy thereof is attached.

☐ Copies of assignments or other documents in the chain of title are attached.

The undersigned is authorized to act on behalf of the assignee.

Respectfully submitted,

Date 11-22-05



John E. Burke
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